

AGREEMENT

This Agreement is made and entered into this ____ day of May, 2010 by and between the JP Excavating, Inc. ("JP"), and Washington County (the "County").

RECITALS

WHEREAS, the County has published a Request for Bid for Building Demolition and Site Cleanup at the Washington County Justice Center Site; and

WHEREAS, JP is the approved low bidder, is qualified and has the resources to complete the demolition project; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

SPECIFIC TERMS

1. **Services.** All work will be completed in a workmanlike manner according to standard practices in substantial conformance with the plans and the terms of this Contract. JP's obligation to provide services and goods and the scope of JP's services are expressly limited to those items contained in this Contract, which consists of this document, the plans reviewed by JP, the County's Request for Bid, JP's Bid, and any written, signed change orders. This Contract constitutes the entire agreement between the parties.

2. **Insurance.** JP shall be responsible for the proper protection of all personnel, materials and equipment stored on or off the County's property or incorporated into the work. JP will also be responsible for all subcontractors who may be employed by JP in performance of this project. The insurance coverage provided by the contractor shall include, but not be limited to, workmen's compensation, comprehensive general liability and property damage. JP must submit certificates of insurance showing coverage amounts prior to commencing any work.

3. **Permitting, Demolition and Site Restoration.** JP agrees to complete the following:
- a. Meet with Washington County for site evaluation.
 - b. Apply for and receive Demolition Permit from Saint George City.
 - c. Coordination with Blue Stakes of Utah Utility Notification Center, to locate all utilities.
 - d. Supervision of labor and materials to properly complete project.
 - e. Demolish and remove the six single family residences including basements, the three outbuildings, and any fencing or concrete or other site debris.
 - f. Remove house foundation to a depth of 4 feet.
 - g. Fill basements with engineered fill material.
 - h. Coordinate with soils engineering company hired by Washington County for compaction testing of fill. The fill is to be no less than 95% compaction and is to be tested in lifts at the direction of soils engineer.
 - i. Clean up and dispose of any scattered material and debris on site.
 - j. All refuse material to be hauled to the Washington County Landfill.
 - k. The County has negotiated a price of \$6.00 (six dollars) per ton for JP. This price is for the Justice Center site project only.
 - l. Trucking expenses and landfill fees are the responsibility of JP.
 - m. All access routes and project site shall be restored to previous topography.
 - n. Complete project close-out (punch list; final billing).
4. **Project Completion.** This project shall be completed by May 24, 2010.
5. **Subsurface conditions.** Prior to the start of construction, the County shall

provide an accessible site and shall identify the boundaries of the property by stakes or markers at all corners. If the actual subsurface or other physical conditions at the site are unusual, or unknown physical conditions, which are different from conditions ordinarily encountered and generally recognized as inherent in work similar to this project, JP shall stop work and give immediate written notice of the condition to the County. JP shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the parties. Any change in the Contract Price as a result of the unknown condition shall be determined as provided herein for changes.

6. **Payment and Contract Price.** The County shall pay JP for services and material upon successful completion of the terms of this agreement, in the amount of \$1,400.00 (One Thousand Four Hundred Dollars) for complete compaction testing and final compliance report, and \$40,262.50 (Forty Thousand Two Hundred Sixty Two Dollars and Fifty Cents) for complete demolition, removal, import and cleanup. No advance payments will be made.

7. **Changes and Repairs to the Work.** JP shall not be allowed to perform work constituting changes or repairs to the Work without a written change order signed by the County and JP. The Contract Price may be augmented by the costs and fees agreed to in writing by the parties for all changes and repairs to this project. JP is not responsible for the problems or damages created by the County, agent, other subcontractors or anyone else who is not an agent of JP. The Contract Price, including profit and overhead, may be adjusted for additional costs resulting from any changes in laws, ordinances, rules and regulations enacted after the date of this Contract, including taxes, and for work required by code interpretations made by regulatory agents. The Contract Price, including profit and overhead, may be adjusted by a written Change Order for additional costs resulting from any changes in work that are required by any

governmental authority despite that this project, as designed or when first constructed, complied with local building code and ordinance requirements.

GENERAL TERMS

8. **Authorization.** Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Contract in the capacity and for the entities set forth where he or she so signs.

9. **Utah Law to govern.** This Contract has been drawn and executed in the State of Utah. All questions concerning the meaning and intention of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah.

10. **Recitals.** The Recitals contained in this Contract are incorporated into the Contract.

11. **Integration.** All agreements heretofore made in the negotiation and preparation of this Contract between the parties hereto are superseded by and merged into this Contract. No statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.

12. **Time is of the essence.** Time is of the essence with regard to this Contract as to each covenant, term, condition, representation, warranty and provision hereof.

13. **Number and gender.** The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Contract in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

14. **Paragraph headings.** The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Contract.

15. **Partial validity.** If any portion of this Contract shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this Contract shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

16. **Waiver.** The waiver by any party to this Contract of a breach of any provision of this Contract shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Contract. Any waiver shall be in writing and signed by the waiving party.

17. **Necessary Acts and Cooperation.** The parties hereby agree to do any act or thing and to execute any and all instruments required by this Contract and which are necessary and proper to make effective the provisions of this Contract.

18. **Ambiguities.** This agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that ambiguities shall be construed against the draftsman' shall have no application to this Contract.

19. **Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one-and- the-same instrument.

20. **Default.** Except as specifically provided for herein, a default by any party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Contract.

21. **Assignment.** No rights or obligations of JP under this Contract shall be assigned without the prior written consent of the County.

22. **Indemnity Clause.** Each party agrees to indemnify, save harmless, and release the other party and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of that party's officers, agents, volunteers, or employees, but not for claims arising from the other party's sole negligence.

23. **Attorney's Fees and Costs.** In the event of a default in the performance of the terms and conditions of this agreement, the defaulting party agrees to pay all costs and expenses arising out of such default, including but not limited to reasonable attorney's fees.

24. **Certification of Legal Work Status.** Contractor (a subcontractor of Contractor or contract employee of Contractor) shall certify that it does not and will not, during the performance of this contract, knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to produce, at the County's request, such documents which are required to verify compliance with applicable State and Federal laws. If the Contractor knowingly employs workers in violation of 8 USC § 1324a, such violation shall be cause of unilateral cancellation of the contract between Contractor and the County. In the event this contract is terminated due to violation of 8 USC § 1324a by the Contractor or subcontractor of the contractor, the Contractor shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the County as well as attorney fees.

JP Excavating, Inc.

By: _____

Its _____

WASHINGTON COUNTY

By: _____
James J. Eardley, Chairman

Attest:

County Clerk

